

1-24-2011

Minor Miracle Productions, LLC v. Starkey Augmentation Record Dckt. 36996

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In the Supreme Court of the State of Idaho

MINOR MIRACLE PRODUCTIONS, LLC,

Plaintiff/Counterdefendant/Respondent,

v.

RANDY STARKEY,

Defendant/Counterclaimant/Third-Party
Plaintiff/Appellant,

and

DAVID L. RICHARDS,

Third-Party Respondent.

ORDER GRANTING MOTION TO
AUGMENT THE RECORD

Supreme Court Docket No. 36996-2009
Bannock County Docket No. 2006-3820

LAW CLERK

RESPONDENT'S MOTION TO AUGMENT/CORRECT RECORD, a BRIEF IN SUPPORT OF RESPONDENT'S MOTION TO AUGMENT/CORRECT RECORD and an AFFIDAVIT OF JAVIER L. GABIOLA IN SUPPORT OF RESPONDENT'S MOTION TO AUGMENT/CORRECT RECORD with attachments were filed by counsel for Respondent on January 18, 2011. Therefore, good cause appearing,

IT HEREBY IS ORDERED that RESPONDENT'S MOTION TO AUGMENT/CORRECT RECORD be, and hereby is, GRANTED and the District Court Clerk shall submit to this Court and counsel the items listed below to be included in the augmentation record, items which were NOT submitted with this Motion, and not contained in this record on appeal:

1. Affidavit of Javier L. Gabiola in Support of Plaintiff's Motion to Strike/Objection to Defendant's Motion to Dismiss and Motion for Sanctions, with attached exhibits, filed September 1, 2009; and
2. Notice of Deposition Duces Tecum of Randy Starkey, filed March 18, 2010.

IT FURTHER IS ORDERED that the District Court Clerk shall submit the items listed above to this Court and counsel on or before seven (7) days of the date of this Order.

ORDER GRANTING MOTION TO AUGMENT THE RECORD - Docket No. 36996-2009

DATED this 24th of January 2011.

For the Supreme Court

Stephen W. Kenyon
Stephen W. Kenyon, Clerk

Counsel of Record
District Court Clerk

LAW CLERK

AUGMENTATION RECORD

ORDER GRANTING MOTION TO AUGMENT THE RECORD - Docket No. 36996-2009

In the Supreme Court of the State of Idaho

MINOR MIRACLE PRODUCTIONS, LLC,)	
)	
Plaintiff/Counterdefendant/Respondent,)	
)	ORDER GRANTING MOTION TO
v.)	AUGMENT THE RECORD
)	
RANDY STARKEY,)	Supreme Court Docket No. 36996-2009
)	Bannock County Docket No. 2008-3920
Defendant/Counterclaimant/Third-Party)	
Plaintiff/Appellant,)	
)	
and)	
)	
DAVID L. RICHARDS,)	
)	
Third-Party Respondent.)	

RESPONDENT'S MOTION TO AUGMENT/CORRECT RECORD, a BRIEF IN SUPPORT OF RESPONDENT'S MOTION TO AUGMENT/CORRECT RECORD and an AFFIDAVIT OF JAVIER L. GABIOLA IN SUPPORT OF RESPONDENT'S MOTION TO AUGMENT/CORRECT RECORD with attachments were filed by counsel for Respondent on January 18, 2011. Therefore, good cause appearing,

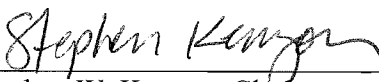
IT HEREBY IS ORDERED that RESPONDENT'S MOTION TO AUGMENT/CORRECT RECORD be, and hereby is, GRANTED and the District Court Clerk shall submit to this Court and counsel the items listed below to be included in the augmentation record, items which were NOT submitted with this Motion, and not contained in this record on appeal:

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2. Notice of Deposition Duces Tecum of Randy Starkey, filed March 18, 2010.

IT FURTHER IS ORDERED that the District Court Clerk shall submit the item listed above to this Court and counsel on or before seven (7) days of the date of this Order.

DATED this 24th of January 2011.

For the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk

Gary L. Cooper ISB #1814
Javier L. Gabiola ISB #5448
COOPER & LARSEN, CHARTERED
151 North Third Avenue, Suite 210
P.O. Box 4229
Pocatello, ID 83205-4229
Phone: (208) 235-1145
Fax: (208) 235-1182

Counsel for Plaintiff

SIXTH JUDICIAL DISTRICT OF IDAHO
County of Bannock

ss.

2010 MAR 18 AM 10:07

I, Gary L. Cooper, do hereby certify that the foregoing is a full, true and correct copy of the original as the same now appears in my office.

Witness my hand and official seal here to at Pocatello, Idaho, this 18th day of March, 2010.

Gary L. Cooper
CLERK OF THE DISTRICT COURT
COUNTY OF BANNOCK



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MINOR MIRACLE PRODUCTIONS,)
LLC, an Idaho Limited Liability Company,)

Plaintiff/Counterdefendant,)

vs.)

RANDY STARKEY,)

Defendant/Counterclaimant.)

RANDY STARKEY,)

Third Party Plaintiff,)

vs.)

DAVID L. RICHARDS,)

Third Party Defendant.)

Case No. CV-2008-3920-OC

NOTICE OF DEPOSITION

YOU WILL PLEASE TAKE NOTICE that the Defendant will take the testimony on oral examination of **Randy Starkey** pursuant to Rules 26 and 30(a) of the Idaho Rules of Civil Procedure, before an agent of M&M Reporting Service, a Notary Public, or in case of their inability to act or be present, before some other officer authorized to administer oaths, on the 5th day of April, 2010, at the hour of 9:00 a.m., on said day at the offices of Cooper & Larsen, Chartered, 151 North 3rd Avenue, Pocatello, Idaho.

Oral examination will continue from time to time until completed and you are hereby notified to appear and take part in the examination.

DATED this 17 day of March, 2010.

COOPER & LARSEN, CHARTERED

By J. Gabiola
JAVIER L. GABIOLA

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of March, 2010, I served a true and correct copy of the foregoing to:

Randy Starkey
1014 Street Road
Kingston Springs, TN 37082

☒ U.S. mail
☐ Express mail
☐ Hand delivery
☐ Fax:

J. Gabiola

Gary L. Cooper ISB #1814
Javier L. Gabiola ISB #5448
COOPER & LARSEN, CHARTERED
151 North Third Avenue, Suite 210
P.O. Box 4229
Pocatello, ID 83205-4229
Phone: (208) 235-1145
Fax: (208) 235-1182

2008-1-13:55
BY [Signature]
DEPUTY CLERK

Counsel for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MINOR MIRACLE PRODUCTIONS,)
LLC, an Idaho Limited Liability Company,)

Case No. CV-2008-3920-OC

Plaintiff/Counterdefendant,)

vs.)

RANDY STARKEY,)

Defendant/Counterclaimant.)

**AFFIDAVIT OF JAVIER L. GABIOLA
IN SUPPORT OF PLAINTIFF'S
MOTION TO STRIKE/OBJECTION TO
DEFENDANT'S MOTION TO DISMISS
AND MOTION FOR STAY ON
DEFENDANT'S MOTION TO DISMISS
AND MOTION FOR SANCTIONS**

RANDY STARKEY,)

Third Party Plaintiff,)

vs.)

DAVID L. RICHARDS,)

Third Party Defendant.)

STATE OF IDAHO)

:ss

County of Bannock)

JAVIER L. GABIOLA, being first duly sworn upon oath, deposes and states as follows:

1. I am one of the attorneys representing Plaintiff in this matter and make this Affidavit

upon my own personal knowledge and information;

**AFFIDAVIT OF JAVIER L. GABIOLA IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE/OBJECTION TO DEFENDANT'S
MOTION TO DISMISS AND MOTION FOR STAY ON DEFENDANT'S MOTION TO DISMISS AND MOTION FOR SANCTIONS**

- PAGE 1

2. Attached hereto as Exhibit A is a copy of Plaintiff's Complaint and Demand for Jury Trial;

3. Attached hereto as Exhibit B is a copy of Defendant's Answer and Counterclaim;

4. Attached hereto as Exhibit C is a copy of a memorandum from Defendant's former attorney Jim Harris to Gary Cooper, Plaintiff's lead attorney on this case, which was not received by Plaintiff's attorneys until August 31st, 2009; and

5. Attached hereto as Exhibit D is a copy of Defendant's Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, which was not received by my office until August 31st, 2009.

6. Defendant has not served complete responses to Plaintiff's discovery. To date, Defendant has not served any documents in response to Plaintiff's written discovery as acknowledged by his former attorney, Jim Harris. Plaintiff has waited 5 months to obtain complete answers and responses, which Defendant has not served. Plaintiff needs additional time to have Defendant comply with the rules of discovery and serve complete answers. Plaintiff also needs additional time to depose Defendant, once he has complied with the rules of discovery and served complete answers and responses to Plaintiff's 5 month old written discovery requests.

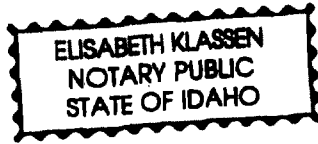
FURTHER SAITH AFFIANT NAUGHT.

DATED this 31 day of August, 2009.

COOPER & LARSEN, CHARTERED

By 
JAVIER L. GABIOLA

SUBSCRIBED AND SWORN TO before me this 31st day of August, 2009.



Elisabeth Klassen
NOTARY PUBLIC FOR IDAHO
Residing at Pocatello
My Commission Expires: 8/21/13

CERTIFICATE OF SERVICE

I hereby certify that on the 31 day of August, 2009, I served a true and correct copy of the foregoing to:

Randy Starkey
1014 Street Road
Kingston Springs, TN 37082

<input type="checkbox"/>	U.S. mail
<input checked="" type="checkbox"/>	Express mail
<input type="checkbox"/>	Hand delivery
<input type="checkbox"/>	Fax:

J. E. Klassen

Gary L. Cooper ISB #1814
COOPER & LARSEN, CHARTERED
151 North Third Avenue, Suite 210
P.O. Box 4229
Pocatello, ID 83205-4229
Phone: (208) 235-1145
Fax: (208) 235-1182

Counsel for Plaintiff

DAVID C. NYE

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MINOR MIRACLE PRODUCTIONS,)
LLC, an Idaho Limited Liability Company,)
)
Plaintiff,)
)
vs.)
)
RANDY STARKEY,)
)
Defendant.)
_____)

CASE NO. CV-2008-3920-OC

**VERIFIED COMPLAINT
and
DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff, Minor Miracle Productions, LLC, an Idaho Limited Liability Company ("Minor Miracle Productions") by and through its attorneys of record, Cooper & Larsen, and its managing member, David L. Richards, as and for its claims for relief and causes of action against the above-named defendant, pleads and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff is, and at all pertinent times has been, a limited liability company organized under the laws of the State of Idaho with its registered office located in Malad City, Idaho.
2. David L. Richards is an individual residing in Oneida County, Idaho and is one of the managers of Plaintiff, Minor Miracle Productions.

FILED
BANNOCK COUNTY
CLERK
2008 SEP 25 PM 3:54
BY
DEPUTY CLERK

EXHIBIT
A

3. Defendant Randy Starkey is an individual residing at 1014 Street Rd., Kingston Springs, Tennessee, and is one of the managers of Plaintiff, Minor Miracle Productions.
4. Defendant Randy Starkey has transacted business within the State of Idaho, as those terms are used in I. C. §5-514, the Idaho "long arm" statute, and is subject to the jurisdiction of the courts of the State of Idaho for the acts giving rise to the claims and causes of action contained in this Complaint.
5. This is an action for an accounting, breach of duty, misappropriation of company property and opportunities, and preliminary and/or permanent injunctive relief pursuant to Rule 65 of the Idaho Rules of Civil Procedure, and an action for monetary damages in excess of the \$10,000 jurisdictional requirement of this Court.
6. This Court has jurisdiction over the subject matter of this action pursuant to Idaho Code §1-705.
7. Venue is proper in this Court pursuant to Idaho Code §5-404.

FACTS PERTINENT TO ALL CLAIMS

8. On or about March 24, 2006, David L. Richards and Randy Starkey formed a limited liability company named Minor Miracle Productions, LLC.
9. Minor Miracle Productions filed its Articles of Organization with the Idaho Secretary of State on March 24, 2006.
10. David L. Richards and Randy Starkey are the sole members and managers of Minor Miracle Productions.
11. The purpose of Minor Miracle Productions was to produce and market the film "The Hayfield."

12. David L. Richards contributed the production costs and use of his real property for the production of "The Hayfield."
13. Randy Starkey contributed the script and direction for the production of "The Hayfield."
14. Minor Miracle Productions is the sole and exclusive owner of the film "The Hayfield."
15. As members and managers of Minor Miracle Productions, David L. Richards and Randy Starkey agreed that the distribution of proceeds from marketing the film "The Hayfield", would be used first to repay David L. Richards for the production costs of the film "The Hayfield", and then all additional proceeds from marketing the film "The Hayfield", would be shared on an equal 50% basis as the sole members of Minor Miracle Productions.
16. David L. Richards has either paid or has obligated himself on behalf of Minor Miracle Productions in the total amount of \$827,872.82 in production costs for the film "The Hayfield." This amount includes \$19,000 in cash which has never been accounted for by Randy Starkey.
17. Randy Starkey is in possession of the film, The Hayfield, which was produced and funded by Minor Miracle Productions.
18. Upon information and belief, it is believed that Randy Starkey has marketed and/or sold interests in the film "The Hayfield", and has not accounted for the proceeds of such marketing and sales to Minor Miracle Productions so that such proceeds can be used to repay David L. Richards for the production costs.
19. Randy Starkey is in possession of equipment which is the property of Minor Miracle Productions and has failed and refused to return said equipment to the possession of Minor Miracle Productions.

COUNT I. BREACH OF THE DUTY

20. Plaintiff realleges, as though set forth fully herein, the allegations of paragraphs 1 - 19.
21. As a manager and a member of Minor Miracle Productions, Randy Starkey owes a duty of loyalty to Minor Miracle Productions which includes the duty to account and hold as trustee for it any property, profit or benefit derived from the exploitation, marketing and sale of the film "The Hayfield."
22. Randy Starkey has in his possession equipment which should be returned to Minor Miracle Productions along with the reasonable value of the use of said equipment during the time it has been in the possession of Randy Starkey.
23. Randy Starkey has sold interests in the film "The Hayfield", the proceeds from which should be accounted for and paid over to Minor Miracle Productions.
24. Randy Starkey has obligated Minor Miracle Productions without the knowledge or consent of David L. Richards.
25. Randy Starkey is in possession of master copies of the film "The Hayfield", which should be returned to Minor Miracle Productions.
26. Randy Starkey has breached his duty of loyalty to Minor Miracle Productions and is indebted to Minor Miracle Productions for the reasonable rental value of the equipment he has usurped to his own use and benefit and is further indebted to Minor Miracle Productions for all proceeds he has realized from the exploitation, marketing and sale of the film "The Hayfield". The exact amount or value of such indebtedness is not known but is believed to be in excess of \$100,000 or such amount as is proven at trial.
27. Randy Starkey has breached his duty of loyalty to Minor Miracle Productions by retaining in his possession to the exclusion of Minor Miracle Productions the possession of the

certain film production equipment and the master copies of the film "The Hayfield", the possession of which should be returned to Minor Miracle Productions.

28. Randy Starkey has breached the duty of loyalty to Minor Miracle Productions by failing and refusing, despite reasonable requests to do so, to account to Minor Miracle Productions for the use by him of the cash, property and opportunities of Minor Miracle Productions. Randy Starkey should be ordered to provide said accounting and to pay over to Minor Miracle Productions the reasonable value of the use by him of the property and opportunities of Minor Miracle Productions. Randy Starkey should be further ordered to indemnify and hold harmless Minor Miracle Productions from all liabilities which were not authorized.
29. The amounts Randy Starkey owes Minor Miracle Productions are of a kind and nature for which pre-judgment interest should be awarded from and after at least the date of the filing of this Complaint or such other date as may be determined by the evidence submitted in support of a monetary judgment in this matter.
30. The subject matter of this lawsuit is a commercial transaction as that term is defined in I. C. §12-120 and Plaintiff is entitled to recover a reasonable attorney fee in prosecuting this action.

COUNT II. INJUNCTIVE RELIEF

31. Plaintiff realleges, as though set forth fully herein, the allegations of paragraphs 1 - 29.
32. Randy Starkey's refusal to account for and return the property of Minor Miracle Productions, including but not limited to film production equipment and the master copies of the film "The Hayfield", violates the rights of Minor Miracle Productions to said property and is strong evidence that Randy Starkey's continued possession of the

same is in violation of the rights of the Plaintiff, is likely to result in waste of said property and will likely result in great or irreparable injury to the Plaintiff.

33. Plaintiff Minor Miracle Productions is entitled to the possession of the film production equipment and the rights to the film "The Hayfield", which if such property remains in the possession of Randy Starkey it is in jeopardy of being sold to unsuspecting third parties and the proceeds lost to Minor Miracle Productions.
34. Plaintiff Minor Miracle Productions is entitled to a preliminary and permanent injunction enjoining Randy Starkey from selling, exploiting or otherwise marketing the film "The Hayfield", and from using any and all production equipment which was purchased or acquired with funds contributed by David L. Richards.

WHEREFORE, Plaintiff Minor Miracle Productions, LLC, prays judgment against the Defendant as follows:

1. Damages in such sums, in excess of \$10,000, as will be proven at the time of trial pursuant to the accounting Randy Starkey is obligated to provide for his use and exploitation of the property of Plaintiff, together with interest, including pre-judgment interest, and attorney fees. In the event this matter is uncontested a monetary judgment against Randy Starkey in the amount of \$827,872.82 which is the amount of production costs for the film "The Hayfield";
2. For an Order requiring Randy Starkey to return all copies including the master copies of the film "The Hayfield", to the possession of Plaintiff along with all production equipment which was purchased or acquired with funds contributed by David L. Richards;

3. For a preliminary and permanent injunction enjoining Randy Starkey from selling, exploiting or otherwise marketing the film "The Hayfield", and from using any and all production equipment which was purchased or acquired with funds contributed by David L. Richards;
4. For an award of reasonable attorney fees and costs which should be in a minimum amount of \$25,000 in the event this matter is uncontested; and
5. For such other and further relief as the Court deems proper under the circumstances.

PLAINTIFF DEMANDS A TRIAL BY JURY

DATED this 23rd day of September, 2008

COOPER & LARSEN



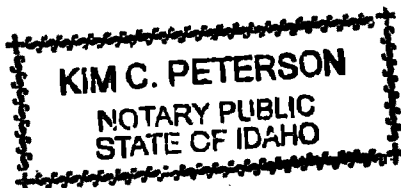
GARY L. COOPER

VERIFICATION

David L. Richards, being first duly sworn upon oath, deposes and states that he is the managing member of Minor Miracle Productions, LLC and has read the foregoing COMPLAINT AND DEMAND FOR JURY TRIAL, knows the contents thereof, and believes that the allegations therein are true and correct to the best of ^{his} ~~her~~ knowledge, information and belief.

David L. Richards
DAVID L. RICHARDS

SUBSCRIBED AND SWORN to on oath before me this 22 day of September, 2008.



Kim C. Peterson
Notary Public of Idaho
Residing at Pocatello, Idaho
My Commission expires: 11-26-13

Gary T. Dance, ISB No. 1513
David P. Gardner, ISB No. 5350
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
412 West Center
Post Office Box 817
Pocatello, Idaho 83204
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gtd@moffatt.com
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James H. Harris, III, *Pro Hac Vice Pending*
HARRIS MARTIN JONES SHRUM
BRADFORD & WOMMACK, P.A.
49 Music Square West, Suite 600
Nashville, TN 37203
Telephone: (615) 321-5400
Facsimile: (615) 321-5469
j3@lawyer.com

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MINOR MIRACLE PRODUCTIONS, LLC, an
Idaho Limited Liability Company,

Plaintiff,

vs.

RANDY STARKY,

Defendant/Counterclaimant.

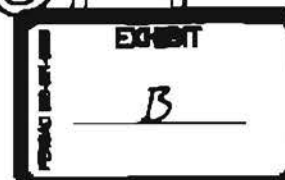
RANDY STARKY,

Case No. CV-2008-3920-OC

**ANSWER, COUNTERCLAIM AND
THIRD PARTY COMPLAINT**

**ANSWER, COUNTERCLAIM AND THIRD PARTY
COMPLAINT - 1**

COPY



Third-Party Plaintiff,

vs.

DAVID L. RICHARDS,

Third-Party Defendant.

COMES NOW the defendant, by and through undersigned counsel, and for his Answer to the Complaint, Counter-Claim and Third-Party Complaint, states as follows:

FIRST DEFENSE

Plaintiff's complaint fails to state a claim upon which relief may be granted against this defendant.

SECOND DEFENSE

1. Defendant admits the allegations contained in ¶ 1 of the complaint.
2. With respect to the allegations contained in ¶ 2 of the complaint, Defendant admits that David L. Richards is an individual residing in Oneida County, Idaho, but lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in the balance of the ¶ 2.
3. With respect to the allegations contained in ¶ 3 of the complaint, Defendant admits that he is an individual residing at 1014 Street Road, Kingston Springs, TN, but denies that he is a manager of Plaintiff.
4. Defendant admits the allegations contained in ¶ 4 of the complaint.
5. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in ¶ 5 of the complaint.
6. Defendant admits the jurisdictional allegation contained in ¶ 6 of the complaint.

7. Defendant admits the venue allegation contained in ¶ 7 of the complaint.
8. Defendant denies the allegations contained in ¶ 8 of the complaint.
9. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in ¶ 9 of the complaint.
10. Defendant denies the allegations contained in ¶ 10 of the complaint.
11. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in ¶ 11 of the complaint.
12. Defendant denies the allegations contained in ¶ 12 of the complaint.
13. Defendant admits the allegations contained in ¶ 13 of the complaint.
14. Defendant denies the allegations contained in ¶¶ 14, 15, and 16 of the complaint.
15. With respect to the allegations contained in ¶ 17 of the complaint, Defendant admits that he is in possession of a copy of the film, "The Hayfield" (the Film) but Defendant denies the balance of the allegations contained in ¶ 17.
16. Defendant denies the allegations contained in ¶¶ 18 and 19 of the complaint.
17. Paragraph 20 of the complaint requires no response from Defendant.
18. Defendant denies the allegations contained in ¶¶ 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 of the complaint.
19. Paragraph 31 of the complaint requires no response from Defendant.
20. Defendant denies the allegations contained in ¶¶ 32, 33, and 34 of the complaint.

21. Defendant denies that Plaintiff is entitled to any relief of any kind against Defendant.

22. Defendant denies generally all allegations that he has not admitted, denied, or otherwise answered.

AFFIRMATIVE DEFENSES

First Affirmative Defense – Failure to State a Claim

23. The complaint fails to state a claim upon which relief can be granted in that Defendant satisfied all of his obligations, contractual and otherwise to Plaintiff and has no remaining legal obligations to Plaintiff.

Second Affirmative Defense – Estoppel

24. During the course of his dealings with David L. Richards d/b/a Minor Miracle Productions, LLC, and afterwards, Defendant satisfied all of Plaintiff's continuing requests. Plaintiff cannot now be heard to adopt the positions stated in the complaint that are inconsistent with Plaintiff's activities both before and after the production of the Film. Plaintiff's claims are barred by the doctrine of estoppel.

Third Affirmative Defense – Accord and Satisfaction

25. Plaintiff and Defendant entered into and performed their respective obligations in accordance with the terms of their oral agreements, and otherwise, throughout the production of the Film, and after. Plaintiff accepted Defendant's services in full accord and satisfaction of Defendant's obligations of any kind to Plaintiff, including those which are the subject of Plaintiff's complaint.

Fourth Affirmative Defense – Waiver

26. By knowingly entering into, performing under, and accepting Defendant's services in accordance with the terms of their oral agreements, and otherwise, throughout the production of the Film, and after, Plaintiff has waived the right to bring the claim that is the subject of this complaint against Defendant.

Fifth Affirmative Defense – Ratification

27. By knowingly entering into, performing under, and accepting Defendant's performance in accordance of their oral agreements, and otherwise, throughout the production of the Film, and after, Plaintiff ratified the actions taken by Defendant with respect to all of Plaintiff's rights of any kind.

Sixth Affirmative Defense – Unclean Hands

28. By knowingly entering into oral agreements with Defendant, and then accepting Defendant's performance, Plaintiff, by filing against Defendant a complaint that contains allegations of fact that are inconsistent with Plaintiff's conduct in conformity with those oral agreements, comes to this court with unclean hands.

Seventh Affirmative Defense – Unclean Hands

29. By filing against Defendant a complaint that contains allegations of fact that are inconsistent with the course of conduct chosen and followed by Plaintiff alone, Plaintiff comes to this court with unclean hands.

Eighth Affirmative Defense – Plaintiff's Responsibility

30. Plaintiff's inappropriate and incompetent performance of its duties in accordance with the terms of Idaho law pertinent to limited liability companies and in accordance with the terms of the oral operating agreement between Plaintiff and Defendant, was the sole and proximate cause of the damages Plaintiff now pursues.

Ninth Affirmative Defense – Plaintiff's Degree of Fault

31. In the event that Defendant is found to be at fault, Defendant asserts that Plaintiff's fault was equal to or greater than Defendant's. Thus, the doctrine of comparative fault bars any recovery by Plaintiff. Additionally, if Plaintiff's fault be found to be less than Defendants' any recovery by Plaintiff must be reduced in accordance with the fault attributable to Plaintiff and apportioned with respect to any fault attributable to Defendant.

Tenth Affirmative Defense – Failure to Join Indispensable Party

32. Plaintiff has failed to join a party, namely David Richards, a member and manager of Plaintiff, in whose absence complete relief cannot be accorded among those already parties.

Eleventh Affirmative Defense – Violation of the Duty of Loyalty

33. Plaintiff's Manager and Member, David Richards (Richards), has violated Idaho Code § 53-622(2) and violated his duty of loyalty to Plaintiff in that he has failed to account to the Plaintiff and its members for any profit or benefit derived by Plaintiff and has failed to obtain the consent of more than one-half of the number of the disinterested managers and managers.

Twelfth Affirmative Defense – Violation of the Duty of Loyalty

34. Plaintiff's Manager and Member, David Richards (Richards), has violated Idaho Code § 53-622(2) and violated his duty of loyalty to Plaintiff in that he has used and/or withheld property belonging to Plaintiff without the consent of more than one-half of the number of the disinterested managers and managers.

Thirteenth Affirmative Defense – Violation of Duty of Loyalty

35. Plaintiff's Manager and Member, David Richards (Richards), has violated Idaho Code § 53-622(2) and violated his duty of loyalty to Plaintiff in that he has failed to account to the Plaintiff and its members for any profit or benefit derived by Plaintiff and has failed to obtain the consent of more than one-half of the number of the disinterested managers and managers.

Fourteenth Affirmative Defense – Failure to Satisfy Legal Requirements

36. Plaintiff's Manager and Member, David Richards (Richards), has violated Idaho Code § 53-623 in that he has taken actions on behalf of Plaintiff and in connection with the business of Plaintiff without first obtaining the majority consent of those that he claims are Plaintiff's managers.

**Fifteenth Affirmative Defense – Violation of Idaho Law
With Respect to Contributions**

37. Plaintiff's Manager and Member, David Richards (Richards), has violated Idaho Code §§ 53-628 and 53-629 in that he has demanded a priority of distribution of Plaintiff's profits and assets as a return of contributions without the benefit of a written agreement allowing such priority.

**Sixteenth Affirmative Defense – Violation of Idaho Law
With Respect to Distributions**

38. Plaintiff's Manager and Member, David Richards (Richards), has violated Idaho Code §§ 53-628 and 53-629 in that he has demanded an unequal distribution of Plaintiff's profits and assets without the benefit of a written agreement allowing such unequal distribution.

**Seventeenth Affirmative Defense – Violation of Idaho Law
With Respect to Authority to Bring Suit**

39. Plaintiff's Manager and Member, David Richards (Richards), has violated Idaho Code § 53-659 in that he has brought suit on behalf of Plaintiff without the authorization to do so obtained in compliance with Idaho Code § 53-623 and with the consent of the member eligible to vote for or against such authority.

**Eighteenth Affirmative Defense – Violation of Idaho Law:
No Gross Negligence or Willful Misconduct**

40. Plaintiff has violated Idaho Code § 53-622 in that Plaintiff has failed to allege any acts or omissions that constitute gross negligence or willful misconduct by Defendant.

Nineteenth Affirmative Defense – Violation of the Statute of Limitations

41. Plaintiff has violated the applicable statute of limitations in that it has failed to bring this action within the time allowed by law.

COUNTERCLAIM and THIRD PARTY COMPLAINT

42. Plaintiff and/or David L. Richards is in the possession of certain documents, namely releases and consent forms (the Releases) executed by cast members, namely actors and extras, who participated in the production of the Film.

43. In order to effectively negotiate a distribution agreement of the Film, the producer of the Film must be able to demonstrate that these Releases exist for all cast members who appear in the Film.

44. On information and belief, Plaintiff is in possession of other personal property that is important to the successful exploitation of the Film.

ATTORNEYS' FEES

45. The defendant has been required to retain the services of the firm of Moffatt Thomas Barrett Rock & Fields, Chtd., to defend this action, and have incurred and will incur costs and attorney fees in connection therewith. The defendant is entitled to recover his attorney fees and other costs of defense from the plaintiff pursuant to the contract as well as Idaho Code Sections 12-120 and 12-121.

WHEREFORE, the Defendant/Counterclaimant/Third-Party Plaintiff, hereinafter referred to as the "Defendant," prays that any relief requests by Plaintiff be denied, and that the Defendant be granted relief as follows:

1. Defendant prays that the court temporarily enjoin Plaintiff from damaging, altering, destroying or disposing in any way of any of Plaintiff's property pending the entry of a final order in this action;
2. Dismiss the complaint with prejudice, and find that the Plaintiff takes nothing thereby;
3. Enter a judgment in favor of the Defendant and against the Plaintiff for money damages in an amount to be proven at trial;
4. Award the Defendant his attorney fees, costs and disbursements incurred in connection with this litigation; and
5. Grant the Defendant such further relief as the Court deems just and equitable under the circumstances.


JURY DEMAND

The Defendant/Counterclaimant/Third-Party Plaintiff demands a jury trial for all claims and causes of action stated by this answer pursuant to Rule 38 of the Idaho Rules of Civil Procedure.

DATED this 7 day of November, 2008.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 


 Gary T. Dance - Of the Firm
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7 day of November, 2008, I caused a true and correct copy of the foregoing **ANSWER, COUNTERCLAIM AND THIRD PARTY COMPLAINT** to be served by the method indicated below, and addressed to the following:

Gary Cooper
COOPER & LARSEN
151 N. 3rd Ave., 2nd Floor
P.O. Box 4229
Pocatello, ID 83205-4229
Fax: (208) 235-1182

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Gary T. Dance

AUG 31 2009

Memorandum

Harris Martin Jones, P.A.
49 Music Square West, Suite 600
Nashville, TN 37203
615-321-5400
615-321-5469 Fax

To: Mr. Gary Cooper
Cooper & Larsen
151 N. 3rd Avenue, 2nd floor
PO Box 4229
Pocatello, ID 83205-4229

From: Jim Harris

Date: 24 August 2009

Subject: Response to Discovery; Randy Starkey

Mr. Cooper,

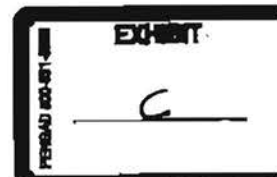
Please forgive the delay in Mr. Starkey's response to the interrogatories and requests for admission that you served on him. I enclose a copy of his responses so that you can see that he in fact did respond.

It appears that in the hurly-burly of the events leading up to counsels' withdrawal, I did not get from Mr. Starkey the documents that he said would be attached to his response. I apologize for any inconvenience that this may have caused you.

I have spoken Mr. Starkey today and he assures me that he has the documents and that he will assemble them and get them to you. By copy of this memo, I am advising Mr. Starkey of these representations.

If you have any questions, please do not hesitate to call me. Again, please accept my apologies.

James H. Harris III



Gary T. Dance, ISB No. 1513
David P. Gardner, ISB No. 5350
Moffatt, Thomas, Barrett, Rock &
Fields, Chartered
412 West Center
Post Office Box 817
Pocatello, Idaho 83204
Telephone: (208) 233-2001
Facsimile: (208) 232-0150
gtd@moffatt.com
dpg@moffatt.com

James H. Harris, III, *Pro Hac Vice Pending*
Harris Martin Jones Shrum
Bradford & Wommack, P.A.
49 Music Square West, Suite 600
Nashville, TN 37203
Telephone: (615) 321-5400
Facsimile: (615) 321-5469
j3@lawyer.com

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MINOR MIRACLE PRODUCTIONS, LLC, an
Idaho Limited Liability Company,

Plaintiff,

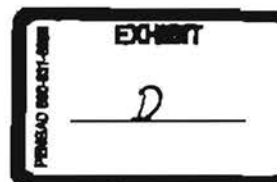
vs.

RANDY STARKY,

Defendant/Counterclaimant

Case No. CV-2008-3920-OC

**ANSWERS AND RESPONSES TO
PLAINTIFF'S/COUNTER
DEFENDANT'S/THIRD PARTY
DEFENDANT'S FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT/
COUNTERCLAIMANT/THIRD PARTY
PLAINTIFF**



RANDY STARKY,

Third-Party Plaintiff,

vs.

DAVID L. RICHARDS,

Third-Party Defendant.

COMES NOW the defendant/counterclaimant/third party plaintiff Randy Starkey ("Defendant"), by and through counsel of record, Moffatt, Thomas, Barrett, Rock & Fields, Chartered and Harris Martin Jones Shrum Bradford & Wommack, P.A., and hereby answers and responds to plaintiff's/counterdefendant's/third party defendant's first set of interrogatories and requests for production of documents as follows:

GENERAL OBJECTIONS

1. Defendant shall respond to the requests as if directed only at documents within its possession, custody or control.
2. This response is based upon documents presently available to and located by Defendant and is given without prejudice to Defendant's right to produce additional documents at a later date should they become located and available as a result of subsequent review of its records or as a result of additional investigation or discovery.
3. By producing or failing to produce some or all of the requested documents, Defendant does not concede the relevance or materiality of any request or the subject to which it relates.
4. Defendant objects to all requests to the extent they seek documents protected by the attorney-client privilege, attorney work product doctrine or

any other applicable privilege.

5. Inadvertent production of privileged information by Defendant shall not constitute waiver of any applicable privilege or doctrine, including, but not limited to, objections on the basis of competency, confidentiality, relevancy, materiality, privilege and/or admissibility as evidence as such objections may apply at trial or otherwise in this action.

6. Defendant objects to the requests to the extent they call for the duplicate production of documents previously produced to and/or are already in the possession of Plaintiff.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Please identify each and every person answering these interrogatories or providing information to answer these interrogatories.

ANSWER NO. 1:

- 1 Randy Starky, c/o Defense Counsel of Record
- 2 Defense Counsel of Record

INTERROGATORY NO. 2: Please provide the name, address and telephone number of each and every person known to Randy Starkey, or that of his agents, representatives or attorneys, who had knowledge of, or participated in, in any manner, the making, production or funding of the Film, prior to, during and after its completion.

ANSWER NO. 2:

- 1 Sonya Chavez (contact information to follow)
- 2 Kenneth Belleville (contact information to follow)

INTERROGATORY NO. 3: Please provide the name, address, telephone number, and a

summary of the substance of the testimony for each and every witness you intend to call at the trial of this matter.

ANSWER NO. 3: Defendant is unsure at this time whom he may call as a witness at the trial of this matter. Defendant reserves the right to supplement this discovery response and intends to comply with any witness disclosure obligation required by the Court.

INTERROGATORY NO. 4: Please provide the name, address, and telephone number of every expert witness you intend to call at the trial of this matter. Pursuant to Idaho Rule of Civil Procedure 26(b)(4)(a) and Idaho Rule of Evidence 705, for each expert witness, please provide the following:

1. Any and all opinions and conclusions (if set forth in a report, please produce a copy);
2. The facts and data supporting the opinions and conclusions;
3. All records, documents, photographs, films, literature or other tangible items reviewed, received, generated by such experts in reaching their opinions;
4. The deposition and trial testimony given by your experts in the preceding four (4) years, identifying the name of the party for whom the expert testified and whether the party was a plaintiff or defendant;
5. The rates and/or fees charged by your experts in providing expert services;
6. The background and/or qualifications of such experts.

ANSWER NO. 4: Defendant is unsure at this time whom he may call as an expert

witness at the trial of this matter. Defendant reserves the right to supplement this discovery response and intends to comply with any witness disclosure obligation required by the Court.

INTERROGATORY NO. 5: Please identify all equipment in Randy Starkey's possession that pertains to the Film, whether the equipment is still in his possession, and, if not, how he disposed of it.

ANSWER NO. 5: Defendant objects to this interrogatory as vague and ambiguous with respect to the word "pertains." Subject to, and without waiving this objection, Defendant states that he has no equipment that belongs to either Minor Miracle Productions or to Dave Richards. He has his own computer equipment and his own camera. Both are still in his possession.

INTERROGATORY NO. 6: Please provide each and every fact upon which you rely in your First and Second defenses set forth in your Answer.

ANSWER NO. 6: Defendant objects to this Interrogatory on the grounds that it is vague, overbroad, and unduly burdensome. Defendant further submits that plaintiff bears the burden of proof in this matter. Without waiving said objections, defendant responds as follows:

Defendant Starkey is not in possession of any equipment belonging to the LLC or to Richards. Starkey has not sold any rights to the film "The Hayfield."

INTERROGATORY NO. 7: Please provide each and every fact upon which you rely in all Nineteen of your Affirmative Defenses in your Answer.

ANSWER NO. 7: Defendant objects to this Interrogatory on the grounds that it is vague, overbroad, and unduly burdensome. Defendant further submits that plaintiff bears the

burden of proof in this matter. See *Answer, Counterclaim, and Third-party Complaint*.

INTERROGATORY NO. 8: Please provide a factual basis for the allegations set forth in your Counterclaim and Third Party Complaint.

ANSWER NO. 8: Defendant objects to this Interrogatory on the grounds that it is vague, overbroad, and unduly burdensome. Without waiving said objections, Richards is in possession of releases and consent forms executed by cast members of "The Hayfield." The film cannot be distributed without record of these releases and consent forms.

INTERROGATORY NO. 9: Please identify all receipts you have in your possession regarding the Film.

ANSWER NO. 9: Defendant has a large number of receipts in his possession regarding the film.

INTERROGATORY NO. 10: Please identify the names, addresses and telephone numbers of all persons, companies or other entities who gave you money or from whom you asked money, towards the production of the Film.

ANSWER NO. 10: Defendant received funds from his father-in-law, Kenneth Belleville, contact information to follow.

INTERROGATORY NO. 11: Please identify each exhibit, whether factual or demonstrative, you intend to introduce at trial.

ANSWER NO. 11: Defendant is unsure at this time which exhibits it may introduce at the time of this matter. Defendant reserves the right to supplement this discovery request.

INTERROGATORY NO. 12: Please identify the names, addresses and telephone numbers of any person, company, or other entity with whom you dealt with in relation to

the Film.

ANSWER NO. 12: Defendant objects to this request as overly broad in that Defendant cannot remember and has no record of the many people with whom he dealt during the production, pre-production, and post-production of the film.

INTERROGATORY NO. 13: Please identify any websites, whether now existing or not, which you created, or had others create, regarding the Film.

ANSWER NO. 13: www.thehayfieldmovie.com

INTERROGATORY NO. 14: Please state whether you have sold the rights to the Film.

If you have, identify the name, address and telephone number of the person, company or entity to whom you sold the Film.

ANSWER NO. 14: No.

INTERROGATORY NO. 15: Please state the names, addresses and telephone numbers of each and every person, company or entity to whom you promised a portion or percentage of the profits or ownership of the Film.

ANSWER NO. 15: Defendant has promised a percentage of Defendant's share of the film's profits to David Poag, contact information to follow.

INTERROGATORY NO. 16: Please identify your experience as a producer or director, in the Film industry, including, but not limited to, the number of films you have produced, edited or directed, the names of such films, and when you produced, edited or directed such films.

ANSWER NO. 16: The Hayfield Movie was the first time Defendant had acted in any of these capacities.

INTERROGATORY NO. 17: Please identify any and all statements and agreements,

whether oral or not, made by you, excluding any communications between you and your attorneys.

ANSWER NO. 17: Defendant objects to this Interrogatory on the grounds that it is vague and overbroad. Defendant is unsure which types of statements or agreement this Interrogatory is seeking. Defendant objects to this request as vague and ambiguous with respect to the words "statements and agreements."

INTERROGATORY NO. 18: Please identify any and all statements and agreements, whether oral or not, made by David Richards.

ANSWER NO. 18: Defendant objects to this Interrogatory on the grounds that it is vague and overbroad. Defendant is unsure which types of statements and agreements this Interrogatory is seeking. Defendant objects to this request as vague and ambiguous with respect to the words "statements and agreements."

INTERROGATORY NO. 19: Please identify whether you have in your possession any recorded statements of any person, including yourself, regarding the Film, and the manner in which such statements were recorded

ANSWER NO. 19: Defendant is in possession of several newspaper articles.

INTERROGATORY NO. 20: Please identify any executed releases or consent forms you have in your possession of any cast members of the Film.

ANSWER NO. 20: Defendant is in possession of ten to twenty actor and location releases.

INTERROGATORY NO. 21: Please identify whether Randy Starkey has been involved in any lawsuit, whether criminal or civil, and, if so, the name of the court in which the litigation occurred, the names of the parties to the litigation and the outcome of the

matter.

ANSWER NO. 21: Defendant was involved in a civil lawsuit in the General Session Court in Cheatham County, TN. The plaintiff was Skyler Proctor. The result of the lawsuit was favorable to Defendant.

INTERROGATORY NO. 22: Please state whether you have sold or given master copies of the Film, and, if so, the names, addresses and telephone numbers of any person or entity to whom you have sold or given copies, when you sold or gave such copies and the amount for which you sold the copies.

ANSWER NO. 22: No.

INTERROGATORY NO. 23: Please identify the name and address of any legal entity you have formed or with whom you are associated, the state in which that entity was formed and your position with those entities.

ANSWER NO. 23: Defendant believes that he is a member of Minor Miracle Productions, LLC, an Idaho limited liability company.

INTERROGATORY NO. 24: Please identify the names, addresses and telephone numbers of persons or entities to whom you made promises, before, during or after the production of the film.

ANSWER NO. 24: Defendant objects to this request as overly broad in that Defendant cannot remember and has no record of the many people to whom he may have made promises during the production, pre-production, and post-production of the film. Defendant objects to this request as vague and ambiguous with respect to the word "promises."

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce copies of each and every document you intend to use as an exhibit in the above matter.

RESPONSE NO. 1: See Response to Interrogatory No. 11.

REQUEST FOR PRODUCTION NO. 2: Please provide copies of your personal state and federal tax returns for the tax years 2005 to 2008

RESPONSE NO. 2: See attached documents

REQUEST FOR PRODUCTION NO. 3: Please produce a copy of any documents responsive to all Interrogatories set forth herein.

RESPONSE NO. 3: See attached documents.

REQUEST FOR PRODUCTION NO. 4: Please produce copies of any and all documents, in any form, you received from David Richards.

RESPONSE NO. 4: See attached documents.

REQUEST FOR PRODUCTION NO. 5: Please provide a copy of any and all documents, in any form, you gave to David Richards.

RESPONSE NO. 5: See attached documents.

REQUEST FOR PRODUCTION NO. 6: Please provide any and all reports, files, curricula vitae, fees/rates, deposition and trial testimony for the preceding four (4) years and documents identifying the amounts charged, from trial experts retained by defendants or defendants' counsel in this matter.

RESPONSE NO. 6: See Response to Interrogatory No. 4.

REQUEST FOR PRODUCTION NO. 7: Please provide a copy of all receipts you have regarding all expenditures made by you for the Film.

RESPONSE NO. 7: See attached documents.

REQUEST FOR PRODUCTION NO. 8: Please provide a complete copy of all receipts reflecting all cash given to you by David Richards.

RESPONSE NO. 8: Defendant has only his personal bank records reflecting amounts given to him by David Richards. See attached documents.

REQUEST FOR PRODUCTION NO. 9: Please provide a copy of all receipts reflecting all money you received from any person, company or entity for the Film.

RESPONSE NO. 9: Defendant has only his personal bank records reflecting amounts given to him by David Richards. See attached documents.

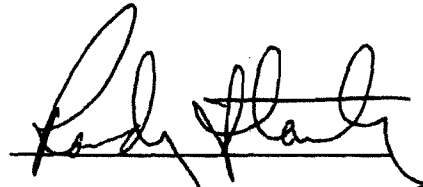
REQUEST FOR PRODUCTION NO. 10: Please provide a copy of any written agreements entered into between you or any other person, company or entity regarding the Film.

RESPONSE NO. 10: See attached documents.

REQUEST FOR PRODUCTION NO. 11: Please produce a copy of any and all documents, photographs, videos, CD's, DVD's, tapes, or other tangible items you have regarding the Film.

RESPONSE NO. 11: Defendant objects to this request on the grounds that it is vague and overbroad, that it calls for the production of documents already in the possession and/or control of Plaintiff, and on the grounds that the request is unduly burdensome.

DATED: 5/26/09



Randy Starkey

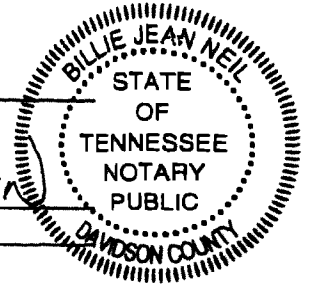
SUBSCRIBED AND SWORN to before me this ^{26th} day of May, 2009.

Billie Jean Neil

NOTARY PUBLIC FOR TENNESSEE

Residing at 2814 West End Nashville TN

My Commission Expires MY COMMISSION EXPIRES:
May 2, 2011



APPROVED AS TO FORM AND

OBJECTIONS:

Moffatt, Thomas, Barrett, Rock & Fields, Chartered

DATED: _____

By _____

Gary T. Dance - Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day of May, 2009, I caused a true and correct copy of the foregoing **ANSWERS AND RESPONSES TO PLAINTIFF'S/COUNTER DEFENDANT'S/THIRD PARTY DEFENDANT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT/ COUNTERCLAIMANT/THIRD PARTY PLAINTIFF** to be served by the method indicated below, and addressed to the following:

Gary Cooper
Cooper & Larsen
151 N. 3rd Ave., 2nd Floor
P.O. Box 4229
Pocatello, ID 83205-4229
Fax: (208) 235-1182

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Gary T. Dance